

REMARKS

By this Amendment, claims 10, 27, 30, 28 and 39 are amended. Claims 10, 27, 30 and 38-44 are pending. Reconsideration in view of the above amendments and following remarks is respectfully requested.

The Advisory Action maintained the previous rejections asserting that claims 10, 27, 30, 38 and 39 are anticipated by Dail et al. (U.S. 5,570,355; hereafter "Dail") and the rejection of claims 40-44 under 35 U.S.C. 103(a) as being unpatentable over Dail in view of Varanasi (U.S. 6,219,341). Applicant traverses the rejections because Dail, analyzed individually or in combination with Varanasi, fails to disclose, teach or suggest all the features recited in the claimed invention. For example, the cited prior art fails to disclose, teach or suggest the operation or structure for exclusive assignment of one common traffic channel to two or more simultaneous mobile communication network calls of a mobile station or the exclusive sharing of capacity of the common traffic channel between the simultaneous calls or the claimed operations and structure for favouring transparent calls or connections over non-transparent calls or connections in allocation of the capacity on the common traffic channel, when the mobile communication network is temporarily unable to allocate more transmission capacity or the requested amount of transmission capacity to the common traffic channel.

In the Advisory Action issued August 17, the Office asserted that there is nothing in the claim language requiring the channel to be exclusively assigned to a station. However, Applicant notes that rejected claim 10 clearly recited assigning only one common traffic channel to two or more simultaneous mobile communication network calls of the mobile station and sharing the capacity of the common traffic channel between the simultaneous calls. Thus, claim 10 required the capacity of one common traffic channel is assigned to be shared by simultaneous calls of one mobile station. Thus, there would be no capacity of the specific traffic channel to be shared by any other mobile station. Applicant has further amended the remaining claims to be even more explicit on this point.

Thus, Applicant resubmits that Dail merely teaches "packet mode communication" in ATM time slots having a capacity shared by multiple stations. In Dail, a station is offered a guaranteed average transmission capacity and quality of service on the link 102 for the calls. The data is then transmitted in individually mutable or switchable data units or packets, each containing the address information required for routing or switching.

The Office Action also incorrectly asserted that the phrase "traffic channel" is extremely broad and can be used to indicate many things to one of ordinary skill in the art, including frames. However, Dail explicitly teaches that ATM time slots within the frame structure are assigned to stations by a reservation process at a rate adequate to meet the delay requirement specified by the station. Thus, Dail does not allocate or assign frames; rather, Dail allocates time slots. Thus, if one of ordinary skill in the art were to have considered anything in Dail to correspond to a "traffic channel," it would have been a time slot, not a frame.

The Office Action also incorrectly asserted that, when modifying Dail, one of ordinary skill in the art would have been motivated to find a simple means of accomplishing this task, such as using well-known techniques. As a result, the Office Action asserted that Varanasi is merely cited as evidence that TDMA and CDMA are well-known techniques which would have likely been employed by Dail in applying his method to a wireless environment.

However, Applicant notes that Dail actually teaches a TDMA method for assigning bandwidth to stations is unsatisfactory (see, column 1, lines 34.-43). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). As a result, Dail actually teaches away from the modification that the Office Action is asserting would have been obvious to one of ordinary skill in the art. A *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997)

Consequently, one of ordinary skill in the art would not have used TDMA with the teachings of Dail.

Similarly, Varanasi teaches that TDMA and CDMA are not satisfactory multiple access techniques in the point of view utilizing the channel bandwidth (column 1 lines 29 to 56); Varanasi actually teaches using a new bandwidth efficient multiple access referred to as BEMA. Thus, Varansai also teaches away from the proposed modification asserted by the Office Action. It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) As a result, one of ordinary skill in the art would not have acted against the opposite teachings of Dail and Varanasi and applied TDMA or CDMA channels in Dail et al.

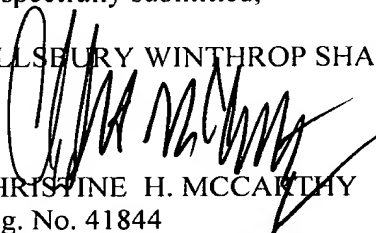
Accordingly, all pending claims are patentable over the cited prior art.

In view of the above remarks, it is respectfully submitted that all of the claims are allowable and that the entire application is in condition for allowance. Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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